

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
HAZARDOUS WASTE MANAGEMENT PROGRAM
POLICY AND PROCEDURE**

POLICY AND PROCEDURE: #EO-02-007-PP

TITLE: Hazardous Waste Complaint Policy and Procedure

AFFECTED PROGRAMS: Office of Legal Counsel and Investigations (Criminal Investigations Branch, Task Force Support & Special Investigations Branch); Hazardous Waste Management Program (Statewide Compliance Division, State Regulatory Programs Division)

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I. PURPOSE

This procedure provides a uniform method by which the Department of Toxic Substances Control (DTSC) documents and responds to complaints alleging violations of the Health and Safety Code section 25100 et seq., and its associated regulations regarding treatment, storage, transportation, and disposal of hazardous wastes. This document is not intended to establish policy or procedures under which the Criminal Investigations Branch conducts investigations of complaints.

II. BACKGROUND

Complaint investigation is one of the main functions of DTSC in enforcing hazardous waste laws. It is DTSC's policy to expeditiously respond to and take appropriate action on all complaints received by DTSC.

III. STATUTORY BASIS

Health and Safety Code section 25197.1 (b) (5) requires DTSC to establish and maintain a toll-free telephone number [(800) 698-6942] for reporting violations of Health and Safety Code, division 20, chapter 6.5. This section also requires DTSC to screen calls for violations and refer information concerning potential violations within three working days to the appropriate office to handle the complaint.

Health and Safety Code section 25191.7 requires DTSC to establish a program to pay a reward to anyone providing information that materially contributes to the imposition of a civil penalty or criminal fine against any person for violating Health and Safety Code, division 20, chapter 6.5. (California Code of Regulations, title 22, sections 66272.20 and 66272.30 contain provisions regarding rewards for informants and payment of reward claims.)

IV. DEFINITIONS

Certified Unified Program Agency (CUPA): The CUPA is the local agency charged with oversight of the hazardous waste generator program at the city, county, or regional level.

Complaint: Information received by DTSC alleging violation(s) of the law or a threat to public health and safety or the environment.

Complaint Coordinator: The individual responsible for receiving and triaging completed complaint report forms.

Complaint Duty Officer: A DTSC staff person assigned to receive and record complaints from Waste Alert Hotline calls, non-Hotline telephone calls, letters, e-mails, facsimile information, and walk-in reports from individuals or other agencies wishing to report potential hazardous waste handling violations.

Complaint Investigation: The process of accumulating and evaluating information to assess the allegations made in a complaint. It is an unscheduled activity initiated by an allegation of non-compliance.

Criminal Investigations Branch (CIB): CIB is the branch within DTSC's Office of Legal Counsel and Investigations (OLCI) that primarily investigates alleged criminal violations of the Hazardous Waste Control Law.

Emergency: An unexpected situation or sudden occurrence of a serious and urgent nature, or a situation that poses an imminent or substantial threat to the health and safety of the public or the environment.

Environmental Task Force Investigation: A multi-agency and/or multi-media activity in which allegations of environmental violations are investigated through a task force.

Inspection: A planned/scheduled periodic compliance review of a regulated entity.

Support Staff: Those staff (typically an Office Technician or Management Services Technician) responsible for data entry of the Complaint Report Form and the Complaints Database data entry form, generating reports, performing quality assurance and quality control (QA/QC) review of the data, maintaining the Complaint Log Binder(s), and maintaining the complaint files.

Task Force Support and Special Investigations Branch (TFS&SIB): TFS&SIB is the branch within OLCI that is assigned to support local task force activities, conduct or coordinate cross media investigations, and conduct specialized environmental investigations.

V. ROLES AND RESPONSIBILITIES

Complaint Duty Officer

1. Receives complaint from Waste Alert Hotline calls, non-Hotline telephone calls, letters, e-mails, facsimile information, and walk-in reports.
2. Collects complaint information from complainant.
3. Determines initial response based on urgency of complaint--emergency, urgent, normal complaint, non-complaint.
4. Completes Complaint Report Form.
5. Sends complaint to CIB and TFS&SIB via e-mail for their review.
6. Sends complaint to complaint coordinator for appropriate follow up and triage.
7. With the approval of the complaint coordinator, may refer routine complaints.

CIB Supervisor

1. Reviews complaint within 48 hours to determine if CIB will investigate the complaint.
2. Notifies the complaint coordinator of the referring branch, via e-mail, of CIB's decision to return or investigate the complaint, within the 48-hour time frame.

TFS&SIB Branch Chief

1. Receives complaint and determines if TFS&SIB is interested in investigating the complaint.
2. Notifies the complaint coordinator of the referring branch, via e-mail, within 48 hours if TFS&SIB is interested in investigating the complaint.
3. Establishes, maintains and distributes a TFS&SIB contacts list for use by the complaint duty officers and the complaint coordinators.

Complaint Coordinator

1. Triages all complaints received that are not kept by CIB.
2. Determines distribution of complaints for appropriate investigation.
3. Refers complaints that SCD has decided not to investigate to TFS&SIB (if TFS&SIB has indicated it will investigate), to the CUPA, or to another State or local agency as appropriate .
4. Designates his or her back-up as necessary.

SCD Supervisor

1. Assigns staff to conduct complaint investigation.
2. Follows up on complaint investigations by assuring timely investigation, data entry, and appropriate enforcement response(s).
3. Makes decision on enforcement option recommendation.

SCD Branch Chief

1. Follows up on complaint investigations by staff by reviewing data entry reports and reports from supervisors.
2. Is responsible for the data quality for the complaints investigated by the branch.
3. Is responsible for sending to State Regulatory Programs Division (SRPD) and TFS&SIB, a monthly list of all complaints referred to CUPAs.
4. Directs Accounting to pay a reward for cases where the reward applicant is determined to be deserving of such.

SCD Person who Investigates

1. Investigates complaint allegations.
2. Completes investigation report.
3. Recommends enforcement option for violations detected.
4. Enters appropriate data regarding complaint to data system.
5. Prepares confidential and public complaint files for completed investigations.
6. Initiates follow-up on reward applications.

Support Staff

1. Mails out reward application to complainant.
2. Reviews returned reward applications and forwards applications with additional information to complaint coordinator for proper handling.
3. Makes copies of complaint forms and information submitted and distributes those copies to supervisors, complaint coordinators, and the person who investigates the complaint.
4. Key data enters information from various data entry forms.
5. Sends complaint referrals to the agency to which the complaint is referred.
6. Prepares monthly reports of complaints referred to CUPAs.
7. Maintains public and confidential complaint files.

VI. COMPLAINT PROCESS --- RECEIVING THE COMPLAINT

The flowchart included as Appendix A outlines the steps in receiving a complaint.

Appendix B provides some interviewing techniques to use in conducting a telephone interview.

All complaints including complaints received through regular (non-Hotline) phone calls, Hotline calls, e-mails, facsimile documents, letters reporting a complaint, and drop-in visitors reporting a complaint should be routed to the complaint duty officer.

All complaint information received by DTSC will be entered onto a Complaint Report Form. The following discussion of complaint types focuses on telephone calls because telephone call complaints are the most common form of complaint received, telephone calls represent the most significant potential source of timely information, and telephone calls are most often associated with emergency or urgent situations that require more immediate response.

A. Types of Complaints

Emergency

If the complaint duty officer receiving the complaint determines the circumstances warrant an emergency response or if the caller identifies circumstances that appear to be an emergency and, in either case, the call does not have aspects of a complaint that should be investigated by DTSC, the caller should be referred to either 911 or the Office of Emergency Services (OES) at 800-852-7550.

If the call appears to be an emergency and the circumstances being reported have aspects of a complaint that should be investigated by DTSC, the complaint duty officer should ask the complainant for his or her name and phone number. The complaint duty officer should then ask the complainant to call either 911 or OES at 800-852-7550, and to call the Hotline back after that call is completed. If the complainant does not call back within an appropriate period of time, the complaint duty officer should contact the complainant at the phone number provided by the complainant. The complaint duty officer should then gather the necessary information to complete the Complaint Report Form information after the caller has communicated the emergency information to the 911 operator or OES. The complaint coordinator should handle the complaint in the same manner as all other

complaints.

Urgent

Complaints that indicate an illegal act is occurring at the time the complainant is calling should be referred immediately to the appropriate agency or DTSC division or office (e.g., CIB) to handle the urgent response necessary to gather evidence and stop the illegal act. The appropriate referral agency may be the local CUPA, police, California Highway Patrol (CHP), or other agency. The complaint duty officer will have to assess the situation and use professional judgment and knowledge to determine the proper agency to which an urgent complaint should be referred.

Complaints

Normally, complaints will be taken by the complaint duty officer who will complete the Complaint Report Form (refer to Appendix C). Complaint calls received by other persons should be transferred to the complaint duty officer. Other persons should accept the complaint information only if the party refuses to be transferred to the complaint duty officer. If the caller refuses to be transferred, complete the complaint intake part of the Complaint Report Form which is located on DTSC's local area network on the U drive as u:\hwm\scd\cmplafrm. Obtain as much information as possible, including the caller's name, phone number, and the names of any other witnesses. Ask the caller to describe the "who, what, when, where, why, and how" of the reported violation. Send the completed form to the complaint duty officer. Call the complaint duty officer to confirm receipt of the complaint.

Non-complaints

Contacts that are not complaints should be referred to the field offices' Public and Business Liaisons. Contacts that do not involve hazardous waste should be referred to the appropriate local or State agency. It is recommended that the complaint duty officer transfer the caller to the appropriate agency. The complaint duty officer should use his or her background and knowledge to properly handle these calls. Complaints involving de minimis amounts of potentially hazardous waste can be referred directly to a CUPA or other local agency, such as the local air pollution control district, if, in the experience of the complaint duty officer, this is an appropriate referral. Depending on the nature of the complaint, the complaint duty officer should remain on the line to assist the caller and while the allegations are discussed with the local or State agency. By having the complaint duty officer remain on the line, additional

information could come to light which could identify potential hazardous waste issues that were not mentioned by the caller during the initial discussion.

B. Complaint Report Form

When the complaint duty officer receives a complaint, the duty officer is responsible for completing the Complaint Report Form. The Complaint Report Form should be filled out at the time that the complaint is received or immediately after from notes taken by the complaint duty officer.

A printed copy of the original complaint should remain in the complaint log binder, with the investigating staff and their respective supervisors receiving a photocopy along with any relevant attachments.

The information on this form includes the name, address, city, zip code, and phone number of the complainant and the business or individual against whom the complaint is being made. The following discussion of the Complaint Report Form is intended to clarify what data are to be collected on the form and to address some general issues associated with taking a complaint.

Confidentiality

When a call is received where the complainant requests confidentiality, the request should be noted on the Complaint Report Form along with any reason given such as fear for his or her personal safety or fear of losing his or her job. The complainant should be encouraged to provide his or her name and address, and to be available to provide additional information to allow staff to adequately follow up on the complaint.

Any complainant requesting confidentiality should be informed that DTSC will attempt to protect the complainant's identity to the best of its ability as allowed by law and will challenge any attempt to require DTSC to disclose the name or address of any complainant. However, the complainant should be informed that disclosure of the complainant's identity may be compelled by a court should the case go to trial and the complainant's attendance as a witness may be necessary. The complainant should also be told that his or her identity may need to be disclosed to other enforcement or prosecutorial agencies in order to facilitate the investigation of the complaint or to obtain search or inspection warrants. Because DTSC cannot guarantee the permanent non-disclosure of a complainant's identity, if the complainant is adamant that his or her identity never be known by anyone, the complainant should remain anonymous. In such cases, "Anonymous" should be

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written in the complainant's name and address section of the form. The complaint should then be handled as an anonymous complaint.

All complaint investigations are confidential. Complaint files should be maintained in each office as a discrete set of files and should be handled as confidential during the course of the investigation.

Log Number

Each complaint will receive a log number when it is entered into the inspections, complaints and enforcement database (ICE). This number is system generated.

Source of Complaint

- A** a complaint referred from another agency
- D** a direct public contact by phone, mail, facsimile, e-mail, walk-in
- O** a complaint referred by DTSC staff

Allegation Codes

- X** Unauthorized transportation (formerly G)
- D** Unauthorized disposal
- S** Unauthorized storage (formerly E)
- T** Unauthorized treatment (formerly F)
- O** Other (formerly L)

Response Code

- N** means "no further action"
The designation "**N**" is used by the complaint coordinator during the triage process or by a supervisor when a complaint has been assigned to that supervisor, if the complaint coordinator or supervisor determines that the complaint does not require further action.
- I** is used when the complaint coordinator designates a complaint for SCD investigation
- R** is used for all complaints referred for investigation outside of SCD

Agency Or Other DTSC Program Referred To

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This field is for those complaints referred to other agencies or to other DTSC programs outside SCD for investigation.

If a complaint is received by a complaint duty officer, but the location of the alleged illegal activity occurs in the area served by a complaint coordinator with whom he or she does not directly work, the complaint is forwarded to the appropriate office. It is

not to be given a log number from the office initially receiving the information. The forwarded complaint is sent to the appropriate office, where the complaint duty officer assigns a log number and notifies the originating office that the complaint has been received. The office that received the "forwarded complaint" would then triage the complaint for possible investigation or referral and would be responsible for forwarding the complaint to CIB and notifying TFS&SIB.

Proposition 65 Notification

A Proposition 65 notification should be completed by the DTSC staff person working on the violation or complaint, as appropriate, depending on the investigation findings. This notification should occur when the investigation has revealed enough information to establish that there is a reason to make the notification. If at any time during the receipt or processing of a complaint, a designated governmental employee (pursuant to Gov. Code, sec. 82019) believes that he or she has obtained sufficient information of the elements of a potential violation that require notification (pursuant to Health & Saf. Code, sec. 25180.7), the employee should make the appropriate Proposition 65 Notification (see Appendix E).

C. Application for Reward Form

This form is generated by the ICE system based on the data entered into the system. The reward form serves two purposes: to acknowledge the receipt of the complaint allegations and to inform the complainant of the existence of the reward process (refer to Appendix C).

1. The application for reward and the fact sheet are generated from the ICE system by support staff and should be mailed to the informant (if the address is known) by support staff at the time the initial information is entered into the complaints database. When a completed form is received back, support staff should review it to determine if the informant added additional information regarding the allegations. If additional information has been added, the complaint coordinator should be notified immediately.
2. The completed application form should be attached to the copy of the complaint

report form and filed in the complaint log binder.

3. When a complaint is referred to the CUPA, other local agency, another State agency, a federal agency, CIB, or TFS&SIB for investigation, and the complainant has applied for a reward, a copy of the reward application should be forwarded to the entity to which the complaint was referred and the reward applicant should be notified of the referral in writing (see Appendix F).

VII. CIB REFERRAL PROCESS

The complaint duty officer should forward all complaints to the appropriate CIB supervisor by e-mail for review for criminal investigation. The subject line for the e-mail should include the complaint number and the county where the violation is alleged to have occurred. A copy of that e-mail should also be sent to the appropriate TFS&SIB contact at the same time. This process should occur after the complaint has been logged-in (on the same day the complaint is received and within four hours of receipt whenever possible). CIB will notify the Northern or Southern SCD complaint coordinator as soon as possible, and no later than 48 hours from the time CIB receives the complaint, of its intentions to investigate the complaint or not.

If the CIB supervisor elects to investigate, then the complaint coordinator selects the proper **Response** on the complaint data entry form, notes that CIB has elected to investigate the case in the comments field, and enters the case closed date. A copy of the closed complaint form will be printed and the support staff will file the closed complaint.

VIII. TRIAGE PROCESS

The Glendale and Sacramento field offices each have a complaint coordinator assigned to monitor complaints, triage the complaints received, refer complaints to appropriate agencies such as the CUPA, other local agency, or another State agency, and send those complaints to be investigated by SCD to appropriate supervisors based on the location of the complaint.

All completed Complaint Report Forms should be given to the complaint coordinator within four hours of receipt of the complaint whenever possible. The complaint coordinator should review the complaint within 24 hours of receipt or as soon as reasonably possible. If the complaint coordinator is temporarily unavailable, a designated backup will be identified for each office. Any triage decision made by a staff backup (other than a Senior Hazardous Substances Scientist or supervisor) should be

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reviewed and signed off by the supervisor.

Health and Safety Code section 25197.1(b)(5) states, "The department shall screen calls for violations and shall refer information concerning potential violations within three working days to the regional office of the department, the office of the city attorney, the district attorney, or the Attorney General, as appropriate." Therefore, for Hotline calls, at least, DTSC has three working days to triage and refer all complaints.

A decision to investigate a complaint should be made if the conduct identified in the complaint: (1) is potentially criminal; (2) poses a significant threat to public health or the environment; (3) is an act that reflects continuing noncompliance; or (4) is an act that reflects serious noncompliance involving multiple CUPA jurisdictions. SCD staff should also investigate the complaint if the complaint regards a permitted facility, a commercial off-site facility operating without a permit, or a registered transporter. As part of the triage process, the complaint coordinator should review the current facility and transporter information in the data system to ensure that complaints regarding permitted facilities and registered transporters are not referred to another agency.

Referrals should generally be made in matters of routine generator or tiered permitting noncompliance, nuisance abatement, or local public health issues.

If the TFS&SIB branch chief has indicated that TFS&SIB has interest in a complaint that will not be investigated by SCD and would otherwise be referred to a CUPA, the complaint coordinator will refer that complaint to TFS&SIB. When the decision is made to refer a complaint, the name of the agency that receives the referral should be recorded in the **Agency Referred** blank. The date the referral of the complaint is made is recorded in the **Response Date** blank. The complaint should be referred by e-mail with the Complaint Report Form as an attachment to the e-mail. Any additional hard copy information that is received regarding the complaint should be forwarded by support staff to the agency designated to receive the referral as soon as reasonably possible, but no later than one working day after receipt of the additional information.

If the complaint coordinator elects to close out the complaint without a formal investigation, a "**No further action**" response will be selected in the **Response** blank, with the date of decision recorded in the **Response Date** blank. This decision may be based on any or all of the following factors:

- P The complaint coordinator's knowledge of activities at the site;

- P Insufficient information; or
- P Lack of credible information.

The decision to close the complaint should be documented directly on the form in the comments field. The decision should identify the rationale for the closing the complaint in the complaint coordinator's area of the form. The designation "**No further action**" is to be used only by the complaint coordinator or supervisor reviewing the complaint.

IX. COMPLAINT ASSIGNMENTS

When the decision is made to investigate the complaint, the letter "I" should be recorded in the **Response Code** blank. The date the decision is made to investigate is recorded in the **Response Date** blank.

When complaints are to be assigned to SCD staff, the complaint coordinator should discuss the allegations with the supervisor. Based on the allegations, complexity, and specifics of the case, the supervisor will select and assign SCD staff to the investigation. The supervisor is responsible for making sure staff accurately complete all data tracking forms in a timely manner.

When a complaint is assigned, the name of the person assigned to the complaint should be selected in the ICE system on the Complaint Report Form in the **Inspector** blank. The date the assignment is made is recorded in the **Date Assigned** blank.

A copy of any attachments should be made by support staff and given to the assigned person investigating the complaint as soon as reasonably possible, but no later than one working day from the time the assignment is made.

X. COMPLAINT INVESTIGATION PROCESS

Once a complaint has been assigned to a staff person, the investigation should begin as soon as reasonably possible. Upon initiating the investigation, the assigned person investigating the complaint should obtain a site code from the Fiscal Systems Unit.

The investigation is to be documented in an investigation report, in a chronological format, that clearly answers who, what, where, why, when, and how for each step in the investigation.

The complaint investigation process can be broken into four phases:

- P Phase I: Preparation/Background Information
- P Phase II: Site Visit(s)/Interview(s)/Evidence Collection
- P Phase III: Report/Findings
- P Phase IV: Enforcement Decision

A. Phase I: Preparation/Background Information

SCD staff have a variety of tools available to them to gather background information on the company, person and/or location of the alleged act(s) of noncompliance which may clarify or change the direction of the investigation. Listed below are the recommended key initial search locations for information.¹

Recommended Background Searches

Contact the Complainant: The purpose of the contact is to identify that an investigation has begun on the allegations, to provide the complainant with the name and phone number of a person who is lead on the investigation, and to interview the complainant to gather additional information. This additional information may include, but is not limited to, the names of others who may have information, times and dates of activities, and more information about the processes and persons involved.

A person who investigates the complaint may need to schedule a meeting with the complainant to obtain maps, photos, or any other documentation the complainant may have to assist in the investigation.

HWTS: A database search will reveal any manifest activity the person or company has performed and may identify types of wastes shipped offsite, identification number, address, mailing address, container types, transporter information, disposal site information, and frequency of waste shipments. Violations of hazardous waste

¹ Depending on the urgency of the complaint investigation response, the evaluations may not all be completed before initiating a field activity.

laws and regulations may not be proven solely based on HWTS data, but the system will identify what manifests staff may need to look at to make a case. Copies of manifests may be needed to substantiate a possible hazardous waste violation.

Department Files: “Department files” collectively refers to field office files, headquarters files (research/development information, treatability study notifications, standardized permit files, technology certification files, etc.), and SRPD tiered permitting data bases. This review may identify previous DTSC involvement, provide permitting information, identify past compliance inspections or complaint investigations, and identify past or current site mitigation activities. It is also recommended that the “Site Mitigation Program Property Database” (formerly “Calsites”) be reviewed to further define past or current cleanup

information. In addition to the “Site Mitigation Program Property Database,” a check of the ICE database may identify past enforcement actions against the company. This search may also identify a DTSC staff person having knowledge of the site. Consultation with that individual may provide valuable information that can clarify or change the direction of the investigation. CIB should also be re-contacted to determine if it has a separate case being developed.

Contact the Local Agency such as the CUPA, the County Health Department, or Fire District: The local agency should be contacted to determine what information may exist in its files regarding the company, person, or location of the complaint and, if ever inspected, when the last generator, tiered permitting, or other inspection occurred. The appropriate local agency should also have a copy of the company's Hazardous Materials Business Plan and the most current tiered permitting application, if applicable. It may be necessary to make an appointment with the local agency to review its files. During this contact, a person who investigates the complaint will also be able to establish if the local agency has an ongoing investigation against the company/person/location or if the local agency has received recent complaints involving entities named in the current complaint.

Contact the Local Sewer Agency and Air Quality Management District: Depending on the nature of the allegation(s), the local sewer agency may be able to provide information regarding permit and compliance history, permit applications, including company diagrams, and information regarding discharge points, emission sources, and the processes operated. Depending on the allegation(s) set forth in the complaint, a person who investigates the complaint may need to establish whether the agency or district has received similar complaints and the status of the resulting investigation(s).

Contact Miscellaneous Local Agencies: Depending on the nature of the allegation(s), a person who investigates the complaint may also need to contact the local county assessor's office, planning department, recorder's office, agricultural commissioner's office, public works department, or other local governmental agencies.

Contact other State or Federal Agencies: Depending on the nature of the allegation(s), a person who investigates the complaint may also contact the Regional Water Quality Control Board, Department of Fish and Game, Occupational Safety and Health Administration, Integrated Waste Management Board, other State agencies, U.S. EPA, or other federal agencies.

Internet Use: There are a variety of Internet sources available for researching activities, chemicals, or companies. In addition, numerous federal and State agencies have different enforcement databases that can be accessed through computers.

Generally and depending on the nature and urgency of the complaint, no site visit should begin until all relevant background information is obtained in order to better assess and prepare the appropriate investigative strategy.

SUPERVISOR AND/OR BRANCH CHIEF BRIEFING

If necessary, the person who investigates the complaint should contact his or her supervisor to discuss issues or problems and to keep the supervisor apprised of information gathered at each phase of the investigation and to discuss strategies, such as the possible need to:

- # conduct sewer monitoring;
- # conduct surveillance;
- # coordinate site visit(s) and interview(s);
- # plan and coordinate large sampling events;
- # request criminal investigator assistance from CIB;
- # discuss CUPA participation;
- # coordinate with the local environmental crimes Task Force through TFS&SIB;
- # discuss legal issues (such as consent, warrants, regulatory interpretations) with OLCI Attorney;

- # coordinate with the local District Attorney, Office of Attorney General, or U.S. Attorney;
- # coordinate with the CHP regarding transporter issues;
- # coordinate with U.S. EPA;
- # brief DTSC management; or
- # discuss a proper rationale for close-out of the investigation based exclusively on information gathered during the background phase of the investigation.

B. Phase II: Site Visit(s)/Interview(s)/Evidence Collection

Pre-site Visit Planning

The number of staff assigned to a complaint investigation will depend on the circumstances involved and the discretion of the supervisor or branch chief. If sampling is anticipated, all health and safety policies will be followed.

In addition to the routine equipment brought to the field when conducting a complaint investigation, it is recommended that all staff going into the field have appropriate communication equipment. The purpose of having a cell phone or a pager is to maintain contact with the field office and management and other support staff, as needed.

Other agency contacts made before conducting a site visit as part of a complaint investigation may include:

- P The CUPA or other agency should be contacted to inform them of the impending site visit, however, it may be done just prior to actually going onto the site. Section 15000(e) of title 27 of the California Code of Regulations requires DTSC to notify the appropriate CUPA of any investigation DTSC will conduct of hazardous waste generators.
- P The CUPA or other agency contact may have valuable information regarding the site. The person who investigates the complaint should obtain, from these other sources, as much information as possible before making a site visit. It is helpful to know if other agencies have been denied access in the past. If a denial has occurred in the past, a person who investigates the complaint should consider preparing inspection warrant documents, as appropriate.
- P The person who investigates the complaint should, in his or her contact with the other agencies, make it clear that DTSC is the lead agency on the investigation, and must establish clear ground rules for the investigation. Recommended

ground rules include the following:

1. All complaint site visits are **UNANNOUNCED**. The participating agency should not contact the target of the investigation prior to the visit.
2. DTSC staff will designate a pre-arranged location for meeting with the other agency contacts and then all will enter the company together.
3. DTSC obtains consent and directs the investigation.
4. All questions regarding the investigation should be directed to DTSC.
5. If the other agencies wish to conduct their routine inspections, those activities must be conducted after DTSC has completed the site visit tasks.

Depending on the circumstances of the complaint, a person who investigates the complaint should consult with:

- P Industrial hygiene staff: Before completing the HARP form, a person who investigates the complaint should consult with the industrial hygiene staff regarding special concerns such as temperature, possible contaminants, sampling, specialized personal protective equipment and monitoring needs.
- P Hazardous Materials Laboratory (HML): Prior to completing the Sample Analysis Request Form, it is prudent to discuss with HML the circumstances of the complaint related to potential sampling activities, special sampling needs, sample volumes, and possible test methods.

Interviews

This is an on-going activity throughout the investigation process. Each interview should be documented in detail, making sure that during the process, the interviewer focuses on "who, what, when, where, why, and how," and the degree of knowledge/intent possessed by the violator.

The purpose of the interview is to confirm existing information and to gather new information. It is also to identify other people who may have firsthand knowledge of the allegations or who were directly involved, or to identify other evidence that will corroborate the witness' information.

Information obtained from interviews may be used to establish probable cause for a search warrant or to establish elements of a violation.

Consent

Consent must be obtained prior to initiating the site visit, a search of records at the site, or any other activity at a site when you are collecting information on or at the property which is the subject of a complaint, unless you have a warrant.² The person who investigates the complaint needs to gain access to a site, documents, or employees without divulging information regarding the allegations set forth in the complaint or the identity of the complainant.

- P It is recommended that when asking for consent, the person who investigates the complaint be positive, non-threatening, and not imply any wrong-doing.
- P A person who investigates the complaint must re-obtain consent with each site visit and must be aware that the company/individual may revoke consent at any point during the investigation.

If consent is denied, or withdrawn, the person who investigates the complaint should discuss obtaining an inspection or search warrant with his or her supervisor and/or legal counsel.

Scope Of Site Visit Investigation

The focus of the site visit should be to investigate the allegations of the complaint and other areas of concern found during the preparation/background phase of the investigation. Nevertheless, the person who investigates the complaint may observe other violations and should be alert for unexpected violations that may be found during a site visit or an interview. The person who investigates the complaint should be looking beyond the obvious and be flexible to adjust to whatever circumstances come up and adjust the investigation accordingly.

The scope of the investigation may be expanded beyond the allegations set forth in the complaint:

² Consent language for investigations is the same as is used for inspections , and is discussed in the Inspection Policy and Procedure.

- P When significant violations other than those alleged in the complaint are found; or
- P When treatment, storage, disposal, or transportation issues are found through a HWTS report; or
- P When other significant issues are noted during the preparation/background phase, site visit, or interviews.

It is generally not appropriate to initiate a routine Compliance Evaluation Inspection as a result of a complaint.

If necessary, the person who investigates the complaint should contact his or her supervisor to discuss issues or problems. The person who investigates the complaint is only entitled to copies of documents and should be aware that documents cannot be seized unless the investigation is conducted under a search warrant.

Sampling Issues

Samples should be collected, if possible and appropriate, to support all violations.³ Samples should be collected whenever possible to support potentially criminal or Class I violations.

Duplicate samples should be offered; however, if collecting samples under a search warrant, the District Attorney or the Assistant U.S. Attorney should be consulted first.

Violation Documentation

All violations observed should be documented in the investigation report.

The person who investigates the complaint should obtain sufficient evidence to prove each element of the violation before a violation can be cited. All violations must be supported by evidence such as samples, photographs, documents, or statements.

If the allegations identified in the complaint are not substantiated, the person who investigates the complaint should summarize the evidence collected and the findings of the investigation.

³ Sampling should not occur if the health and safety of the staff could be jeopardized.

If no violations were observed during the site visit and the person who investigates the complaint anticipates that no additional actions will be taken, the person who investigates the complaint may leave a Summary of Observations indicating that no violations were observed.

If the person who investigates the complaint determines that the violations observed during the course of the investigation and a site visit do not appear to be of a criminal nature, then a Summary of Violations/Notice to Comply (SOV/NTC) should be issued. If the complaint was made against a generator or other business inspected by a CUPA and the violations are not Class I violations, the SOV/NTC shall be forwarded to the CUPA for follow-up. If the violations detected include Class I violations, appropriate enforcement action should be conducted by DTSC.

If the person who investigates the complaint determines that the violations may be of a criminal nature, the person who investigates the complaint should leave a written notification of conditions observed only in very limited situations. A Notice of Violation (NOV) should be issued in the field prior to leaving the site when situations are encountered that pose a serious threat to the health and safety of the public or to the environment. Those situations could include, but are not limited to, leaking tanks or containers, storage of incompatible hazardous wastes, unauthorized treatment activities that could cause a release, or unauthorized disposal to a drain or to the ground.⁴

It may also be necessary to notify the local emergency response personnel, district attorney, or other law enforcement personnel if the situation poses a serious, imminent threat. The person who investigates the complaint should consult immediately with his or her supervisor regarding the conditions observed.

The NOV should identify the specific conditions and/or circumstances observed and the regulation or statute that was violated. It should identify the remedy to correct the condition(s) and specify a time by which the violation must be corrected. The person who investigates the complaint should also conduct a timely follow-up visit to determine if the conditions identified in the NOV have ceased. Please refer to Appendix G for the recommended NOV format.

⁴ The issuance of such a document is not intended to jeopardize a pending criminal case, but would serve to communicate to a company the serious environmental/public health threat a particular activity poses and the need to immediately cease such an activity or take certain corrective measures to alleviate the potential threat.

Site Departure Discussions

No violations observed

The site departure discussions should consist of thanking the owner/operator for their cooperation prior to leaving the site.

Non-criminal violations observed

The site departure discussions between the person who investigates the complaint and the operator should be substantially the same as what is traditionally discussed during an exit interview for an inspection.

Potential criminal violations observed

The site departure discussions between a person who investigates the complaint and the operator should be substantially different from what is traditionally discussed during an exit interview for an inspection if the violations are considered to be of a criminal nature.

The person who investigates the complaint should not respond to questions regarding findings because the site visit is a portion of an investigation and does not comprise the entire investigation.

The person who investigates the complaint should:

- P Thank the company representative(s) for their time, patience, and cooperation;
- P Indicate there may be a need for additional contacts to clarify information obtained or to ask additional questions;
- P Indicate the site visit is part of an on-going investigation; and
- P Not discuss what might happen next because an evaluation of all of the information must be completed.

C. Phase III: Report/Findings

Debriefing Discussions

If the person who investigates the complaint has any concerns or questions regarding the site visit or the potential violations observed, he or she should discuss those concerns, as well as the preliminary findings from the site visit, with his or her supervisor (and branch chief, depending on the circumstances). Those discussions should cover:

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- P Conditions observed;
- P Any opinion on preliminary findings;
- P Possible re-direction of the investigation;
- P Any technical issues; and
- P Health and safety issues.

For large investigations, the lead person investigating the complaint should have an internal debriefing session which should include all DTSC staff involved in the investigation. This debriefing should include the above items plus discussions regarding:

- P Adequacy of pre-planning protocol;
- P Problems encountered (sampling, health and safety);
- P Were roles adequately defined;
- P Who else should have been involved;
- P Report writing roles;
- P How the planning could be done better for future investigations; and
- P Future activities/responsibilities.

For large investigations involving outside agencies, an external debriefing session should be held. External debriefings should include all agencies involved in the investigation and could include discussions regarding:

- P Issues as discussed in the internal DTSC debriefing;
- P Violations that have been found to date;
- P Schedules for completion of reports; and
- P Additional follow-up activities/responsibilities.

Investigation Report

Please refer to Appendices H and I for the sample Complaint Report Summary and Complaint Investigation Report format.

The investigation report should consist of two sections: a Complaint Report Summary and a Complaint Investigation Report.

The Complaint Report Summary is the cover page of the full report and serves as a summary of the findings and the disposition of the investigation. This document should be completed once the report is signed off and the investigation is closed. The Complaint Report Summary should also serve to identify if the attached report is a

supplemental report documenting follow-up activities or other additional information relevant to the initial investigation. If during the course of the

investigation, the allegations regarding violations of the law are not substantiated and no additional violations are discovered, the inspector, with the approval of the supervisor, may complete the Complaint Report Summary, rather than the full Complaint Investigation Report. When the Complaint Report Summary is used in this manner, it should be completed within one week of the date that a decision has been made to close the case.

The Complaint Investigation Report portion is the narrative that describes the details of the investigation and specifies the violations detected.

The drafting of the narrative portion of the investigation report should begin when the investigation commences and should document each activity (including, but not limited to, phone calls, file reviews, computer searches, interviews, and site visits that are relevant and significant to the investigation). The investigation should be chronologically documented and must be written in a concise manner, reporting only the observations and facts of the investigation. It should not contain the opinions or assumptions of the person who investigates the complaint.

The person who investigates the complaint should draft the document using the same thought process utilized in the investigation, specifically articulating the who, what, where, when, why, and how of the investigation.

The person who investigates the complaint should document in the report that consent was requested and obtained, and should specify the name of the individual who granted consent.

The violation portion of the report should document all violations found during the investigation. The specific statute(s) or regulation(s) violated should be identified along with the circumstances found during the investigation. Evidence and facts must support each element of the violation cited. The evidence obtained to support the violations cited should be identified with each violation. The evidence obtained to support the violation should also be included as attachments to the report. A copy of the Complaint Report Form should also be included as an attachment. The investigation report should be completed within 60 days from the date that the investigation is deemed completed by the person who investigates the complaint.

The supervisor should review and concur with the contents and recommendations

contained in the report. It is recommended that the review of the report be completed within ten working days of receipt.⁵ The supervisor should sign and date the complaint report summary. This indicates the investigation is completed and closed.

D. Phase IV: Enforcement Decision

Upon completing the investigation, an enforcement recommendation should be made based on the findings of the investigation and in conjunction with DTSC's Enforcement Response Policy EO-02-002-PP.

When the person who investigates the complaint and the supervisor have determined that the appropriate enforcement action is to issue an administrative enforcement order or to refer the case to the Office of the Attorney General, a copy of the investigation report should be mailed to the alleged violator within 65 days of the conclusion of the investigation, unless the conditions specified in Health & Safety Code section 25185(c)(2) are satisfied. Note that it is DTSC's policy to mail the report to the alleged violator, even though this is not required by law.

XI. FILING OF COMPLETED INVESTIGATION REPORTS

After an investigation and enforcement action are completed, the following is recommended for handling the investigation files:

- # The person who investigated the complaint should review the entire complaint file and create a confidential file and a public record file.
- # The confidential file should include the complaint form and any information that might identify the complainant.
- # The person who investigated the complaint should make a notation in the confidential file folder that the report has been reviewed for confidential information and that, if appropriate, an edited version of the narrative portion of the report exists in the public files. Confidential attachments and why those attachments are confidential should be noted. The notation should be signed and dated by either the person who investigated the complaint or his or her supervisor.

⁵ A 10-day review period is consistent with the time frame used by CIB supervising a person who investigates to review and comment on the adequacy and completeness of an investigation report.

- # The public record file should contain a redacted version of the complaint investigation report, including attachments. The information that should be redacted includes, but is not limited to, a confidential complainant's name and address, all social security numbers, arrest information, and trade secret information.⁶ A copy of the original report should be made and the sensitive information redacted on the copy. The redacted pages should be re-copied and the edited version of the report should be placed in the public files. Any issues involving confidentiality should be discussed with OLCI.
- # Completed enforcement documents such as the filed civil or criminal complaint, administrative orders, and settlement documents, should be placed in the public record file.
- # If the investigation was referred to a CUPA for follow-up, the referral letter should also be placed in the public record file.

If a Public Records Act request is received to review the file for a site formerly subject to an investigation, the public would then have access to a redacted version of the Summary of Investigation, a redacted version of the investigation report (without attachments) and all finalized enforcement documents. If the public file does not contain a copy of the redacted report and a request is made to review the investigation report, the supervisor should be notified. The supervisor should contact OLCI. If, upon review of the investigation file, a determination is made that a review of the entire investigation report can occur, the entire investigation report should then be released.

XII. FOLLOW-UP ON REWARD APPLICATIONS:

When a case where a reward application has been filed is adjudicated or settled and a penalty or fine has been collected and deposited, the complainant may be eligible for a reward. The reward process is established in Health and Safety Code section 25191.7. Sections 66272.20 and 66272.30 of title 22, California Code of Regulations, establish the process for applying for a reward and the factors that DTSC or a county must consider in determining whether a reward will be granted.

Reward applications for cases that have been prosecuted by a county should be forwarded to and handled by the prosecuting office of the county. Reward applications for cases that have been prosecuted by DTSC or the Office of the Attorney General

⁶ The review of the completed report for potentially confidential information should occur as soon as the investigation is complete because of the potential for staff changes and an eventual lack of familiarity with the case and the report.

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representing DTSC should be handled by DTSC.

For cases handled by SCD, CIB, or TFS&SIB, where the case has resulted in the collection of a fine or penalty and a reward application has been received, the person who investigated the complaint should alert his or her supervisor regarding the application. The supervisor and the person who investigated the complaint should consult with the OLCI attorney and the Deputy Attorney General, as appropriate, to make a determination whether the applicant supplied information that materially contributed to settlement with or a judgment against a person or persons for violations of the Health and Safety Code, as provided in Health and Safety Code section 25191.7.

After a determination has been made, the person who investigates the complaint should prepare a letter notifying the complainant of DTSC's determination. When the determination is made to grant a reward, a memorandum should be prepared for the branch chief's signature directing Accounting to prepare and release a check for the amount of the reward to the applicant. That letter should be reviewed by the OLCI attorney involved in the case and forwarded to Accounting for payment of the reward.

CONTACT:

Hazardous Waste Management Program
Statewide Compliance Division
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
(916) 322-0349 (916) 324-7193

OR

George Rose
(916) 445-1664
grose@dtsc.ca.gov

This policy and procedure is intended to provide guidance on complaint activities. However, the policy and procedure does not replace or supersede relevant statutes and regulations. The information contained in this policy and procedure is based upon the statutes and regulations in effect as of the date the policy and procedure was signed. Interested parties are advised to keep apprised of subsequent changes to relevant statutes and regulations.

This policy and procedure expires five years from the date of signature.

November 15, 2002

Date

[original signed by]

Edwin F. Lowry

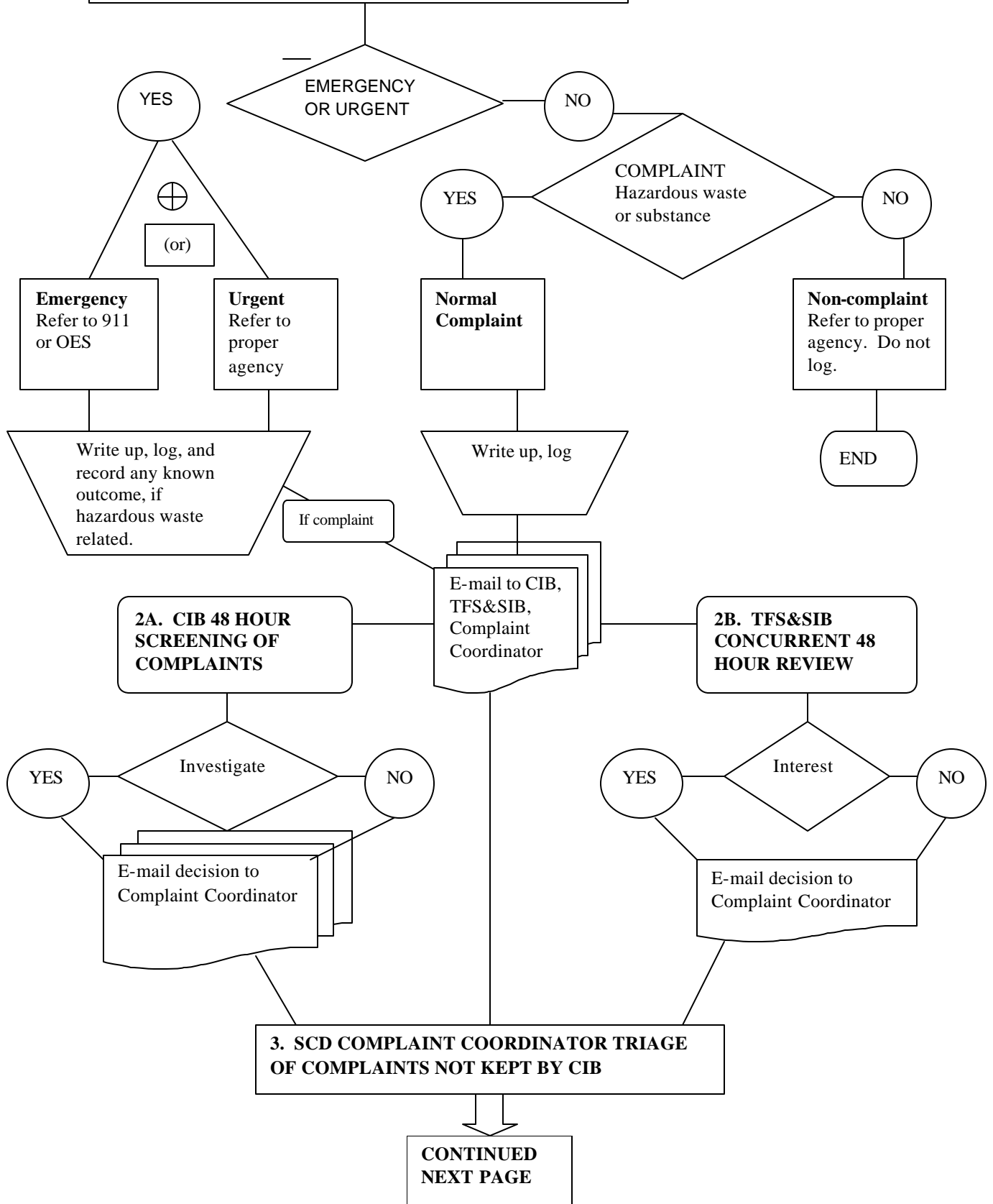
Director

Department of Toxic Substances Control

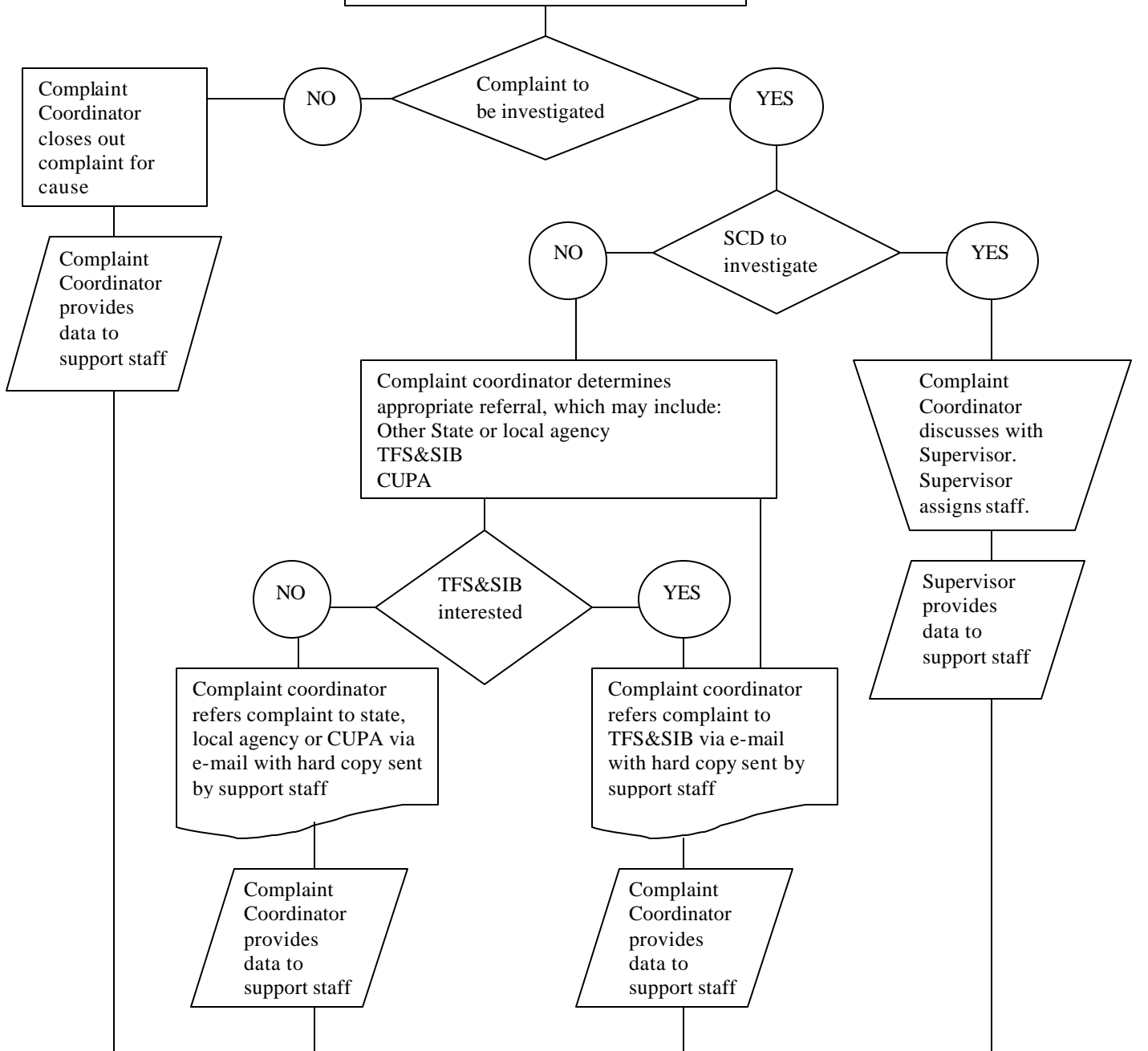
APPENDIX A

COMPLAINT PROCESS – INTAKE THROUGH ASSIGNMENT

1. COMPLAINT DUTY OFFICER RECEIVES CONTACT



**3. SCD COMPLAINT COORINATOR
TRIAGE OF COMPLAINTS**



4. DATA RECORDING -- Investigative staff reports outcome to support staff. Investigative staff prepares complaint files. Support staff handles data entry, provides hard copy of data, and generates reports as needed.

Hard copies to agencies to whom complaint is referred

Hard copies to SCD staff assigned a particular complaint

Reports as needed

Data input into databases

5. REWARD APPLICATIONS (OCCURS INDEPENDENTLY OF OTHER STEPS IN PROCESS)

Support staff mail reward applications to all complainants. Support staff log in reward applications received and notify Complaint Coordinator of new information that may come in with reward applications.

APPENDIX B

INTERVIEW TECHNIQUES

TAKING COMPLAINTS OVER THE PHONE

- A. Procedure for taking complaints over the phone
 - 1. General Information.
 - a. Clearly identify the Department of Toxic Substances Control and the Waste Alert Hotline. This lets the complainant know that he or she has dialed the correct number.
 - b. The complaint duty officer should give his or her first name. Giving one's first name makes the complainant feel comfortable and sets the tone for a more friendly conversation.
 - c. Ask the complainant if he or she wants to call in a complaint. This is another assurance that the complainant has called the right number.
 - 2. Obtaining information regarding the complainant.
 - a. Try to obtain complainant's name, address, and telephone number. Some complainants may choose to remain anonymous. Explain to the complainant the importance of disclosing his or her identity. Any complainant requesting confidentiality should be informed that DTSC will attempt to protect his or her identity to the best of its ability as allowed by law. However, disclosure of the complainant's identity may be compelled by a court should the case go to trial and the complainant's attendance as a witness may be necessary. Explain the Receipt of Notification and Application for Reward form (see Appendix C, page 3). This form could be an incentive to provide the name and the address from the complainant.
 - b. If the complainant hesitates to give personal information, explain to him or her that there might be a need for a follow up call to gather more information. Arrange a time for the complainant to call the inspector. Offer the complainant the option to call the inspector collect.
 - c. Tell the complainant that an alias can be used if the complainant does not want to give his or her real name. He or she can leave a phone number, not necessarily his or her own, where messages can be left for the complainant, so that the inspector can get hold of the complainant.

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3. Confidentiality.
 - a. Inform the complainant that DTSC treats all complaints as confidential information, however, we cannot promise that confidentiality of the complainant's identity can be maintained. Complaints can lead to enforcement or even criminal cases. The testimony of the complainant might be needed to help put the case together and he or she must be identified at that time.
 - b. Tell the complainant that during the investigation his or her identity will not be revealed to the party against whom he or she is complaining.
4. Obtain information about the who and where of the complaint.
 - a. Ask the complainant who the complaint is against. Make sure that this information is accurate. Ask the complainant to spell the names, if possible.
 - b. Ask the complainant the exact location of the alleged violation. If possible, get an exact address. This could be the address of the company or individual against whom the complaint is being made. Sometimes complaints regard a concern at a certain location, not necessarily a company or an individual. Try to pin point locations using landmarks (an empty lot next to McArthur Park, behind the ABC gas station, a block away from the County General Hospital), cross streets (on Main Street between 2nd and 3rd, in the middle of the block between Spring and Hope) and precise descriptions of location (an abandoned building on the 1200 block of West Avenue, an abandoned tanker truck on Maple Drive). Do not forget to include the city when asking for an address or location. Bear in mind that some streets go through different cities. Explain to the complainant that it would be impossible for DTSC to follow up a complaint unless the location of the activity is known.
 - c. Try to obtain a telephone number for the company or individual against whom the complaint is being filed.
5. Details regarding the complaint. ASK FOR AS MUCH DETAIL AS POSSIBLE. NOTE EVERYTHING THE COMPLAINANT IS SAYING. WHAT MIGHT SEEM LIKE AN INSIGNIFICANT BIT OF INFORMATION AT THE TIME MIGHT BE HELPFUL WHEN THE CASE IS BEING DEVELOPED.

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- a. Suggested questions to consider regarding the “act”:
 - 1. What activity was being observed?
 - 2. What type of containers were observed? Are there any markings on the containers? Can the complainant give an exact number or estimate of the number of containers involved?
 - 3. Can the complainant tell if any chemicals/substances are involved? Does the complainant know what substances are involved? How does the complainant know what the substances are?
 - 4. Are there visible signs of a release that the complainant observed, e.g., a spill on the ground, gassing, vapor clouds, unusual smell? How did the complainant come by this information? Does the complainant know what was spilled, when it was spilled, how it was spilled, and who spilled it?
 - 5. Did the complainant observe any vehicle involved in the activity? Can the complainant give a description of the vehicle-- type (truck, pick up, a car, a sport utility vehicle), color, make of the vehicle, license plate number, possible age of the vehicle?
 - 6. Did the complainant notice the driver of the vehicle? Get a description of the driver and any other individuals in the vehicle.
 - 7. Does the complainant know whether the same activity is going on at other locations?
- b. Suggested questions about how the complainant knows about the activity.
 - 1. How did the complainant know about the activity?
 - 2. When was the activity observed for the first time? Is this a one time occurrence or is it ongoing? Who was the first person to observe the activity?
 - 3. Did the complainant observe an individual or individuals engaging in the activity? Does the complainant know the individual(s) involved in the activity? How does the complainant know the individual(s) involved?
 - 4. Does the complainant know if any other individual or individuals are involved in the activity? Will the complainant provide the names of the other individual(s) involved? Does

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he or she think the other individual(s) would be willing to talk to the DTSC?

5. If this is an ongoing activity, what time and day does it usually occur? Does this activity occur regularly or sporadically?
6. Potential emergency telephone call.
 - a. If at any point during the conversation, the complaint duty officer determines that the complainant is reporting an emergency situation, tell the complainant that his or her call is going to be transferred to the Office of Emergency Services (OES).
 - b. The complaint duty officer calls OES while the complainant is on the line allowing the complainant to report the emergency situation. The complaint duty officer, while listening to the complainant's report to OES, can obtain pertinent information regarding the emergency situation from the complainant. This information could be useful for potential follow-up on the complaint.
 - c. If the complaint duty officer concludes that the emergency situation should be reported to the appropriate local agency for response, the same procedure described above should be taken with the local emergency response agency.
 - d. If at any point during the conversation, the complaint duty officer determines that the complainant is reporting a situation that another agency must be made aware of immediately, the complaint duty officer should call the complaints section of that agency while the complainant is on the line. The same procedure prescribed for an "emergency call" should be followed. The complaint duty officer must obtain pertinent information regarding the complaint for possible follow-up later.
7. Potential nonhazardous waste complaint call.
 - a. If the complaint duty officer determines that the complainant is reporting a situation that is clearly not a violation of the hazardous waste laws or a threat to public health or the environment, refer him or her to the correct party (e.g., other program-related questions could be referred to the Public and Business Liaisons in the regional offices and non-complaint environmental concerns can be referred to other State or local agencies).
 - b. The complaint duty officer should give the complainant the correct telephone number of the party the complainant needs to call and then

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should forward the call to that party, remaining on the line the entire time. The complaint duty officer should explain to the complainant why the call is being transferred and to whom the call is being transferred or referred.

- c. Informing the complainant that you will remain on the line with him or her accomplishes several tasks.
 1. It allows you to hear the complaint again. The complainant may change the complaint or add information to the complaint which could bring the complaint back into the hazardous waste arena.
 2. Having a State official remain on the line helps open doors that may occasionally not be open to the general public.
 3. It may relieve some of the complainant's frustration if the complainant has been transferred around a lot.
8. Wrapping up the conversation.
 - a. Make sure that all information has been noted. Take the time to go over what was written with the complainant to assure that nothing has been missed. Remember, this might be the only contact with the complainant.
 - b. Ask the complainant if he or she has referred this complaint to another agency. Make a note of the agency or agencies with which the complainant has talked. This information could help in the triage process.
 - c. Thank the complainant. Ask his or her permission for a call back should there be more questions. Ask the complainant when it would be most convenient for the complaint duty officer to call back.

B. General tips on taking complaints over the phone.

1. Be tactful and courteous at all times.
2. Ask open-ended questions to gather more information.
3. Try to sound relaxed. Do not make the complainant feel that you are in a hurry. This might discourage the complainant from giving you more information.
4. Do not be afraid to ask the complainant to repeat what he or she said.
5. Communicate to the complainant the need to gather as much information as possible. Tell the complainant that he or she can help address concerns in the complaint if he or she provides all the information that he or she has.

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6. Tell the complainant that the information is being written down. If possible read back to the complainant the information taken down. This assures that complaint duty officer has taken down the information correctly. Hearing what he or she said might help the complainant recall more details.
7. Keep in mind the **Who, What, Where, When, Why, and How** when interviewing the complainant and make sure that accurate information to answer the **Who, What, Where, When, Why, and How** is gathered.
8. Develop good listening techniques. Keep quiet while the complainant is talking. Do not interrupt.
9. Avoid talking down to a complainant. If the complainant does not understand the laws, try to explain them to him or her. Sometimes, a complainant might think that what he or she observed was illegal. If the complaint duty officer knows otherwise, try to explain this to the complainant without making the complainant feel embarrassed.
10. Sometimes, it is necessary to allow the complainant to vent his or her anger first, before he or she can rationally give details on a complaint. Be sensitive to the complainant's anger, frustration or even fear. Sometimes, the complainant may be frustrated with DTSC because he or she has called several times before and felt that he or she was being given the run-around. Try to be sympathetic to the complainant.
11. When in doubt as to whether the complainant is giving a valid complaint or not, take down the information he or she is providing. Make every complainant feel that his or her call is important. Delay the decision regarding validity of complaint to the triage process.
12. Avoid arguing with the complainant. The complainant has the information. Nothing is to be gained by trying to prove the complainant wrong.
13. Threatening calls should be documented and never be taken lightly. Report threatening calls to the proper authority.
14. Be sincere.

COMPLAINT REPORT FORM***Log Number:***

COMPLAINANT		SUBJECT OF INVESTIGATION	
Name:		<i>Name:</i>	
Address:		<i>Business Name:</i>	
City:	Zip:	Address:	
Phone: ()		City:	Zip:
		Phone: ()	
		County:	

COMPLAINT DATA

Is this an emergency? Yes " No " If yes, call the Office of Emergency Services (OES) at 1-800-852-7550.

RCRA "	State "	<i>Date Received:</i>	Time:	Received by:
Notification Made Regarding Proposition 65	Yes " No "	Local Agency Notified:	Who notified at local agency:	
Date of Incident:	Allegation Code:	Quantity Involved:	Source of Complaint Code:	

Other Comments:

COMPLAINT COORDINATORS ONLY

Response Code:	<i>Agency Referred To:</i>
Response Date:	<i>Assigned Inspector:</i>
Date Assigned:	

Note: Information to be transferred to complaint log is highlighted in bold italic print. Attach addendum if necessary.

COMPLAINT REPORT FORM CODES

Code Number	County Name	Code Number	County Name	Code Number	County Name
1	Alameda	30	Orange	41	San Mateo
2	Alpine	31	Placer	42	Santa Barbara
3	Amador	21	Marin	43	Santa Clara
4	Butte	22	Mariposa	44	Santa Cruz
5	Calaveras	23	Mendocino	45	Shasta
6	Colusa	24	Merced	46	Sierra
7	Contra Costa	25	Modoc	47	Siskiyou
8	Del Norte	26	Mono	48	Solano
9	El Dorado	27	Monterey	49	Sonoma
10	Fresno	28	Napa	50	Stanislaus
11	Glenn	29	Nevada	51	Sutter
12	Humboldt	32	Plumas	52	Tehama
13	Imperial	33	Riverside	53	Trinity
14	Inyo	34	Sacramento	54	Tulare
15	Kern	35	San Benito	55	Tuolumne
16	Kings	36	San Bernardino	56	Ventura
17	Lake	37	San Diego	57	Yolo
18	Lassen	38	San Francisco	58	Yuba
19	Los Angeles	39	San Joaquin		
20	Madera	40	San Luis Obispo		

ALLEGATION CODES

D	Unauthorized Disposal
S	Unauthorized Storage
T	Unauthorized Treatment
X	Unauthorized Transportation
O	Other

SOURCE OF COMPLAINT

D	Direct public contact (phone, walk-in, mail, e-mail, facsimile)
A	Referred from another agency
O	Referred from DTSC staff

RESPONSE CODES

I	Investigated
R	Referred
N	No further action

RECEIPT OF NOTIFICATION AND APPLICATION FOR REWARD**Log Number:**

COMPLAINANT		SUBJECT OF INVESTIGATION	
Name:		Name:	
Address:		Business Name:	
City:	Zip:	Address:	
Phone: ()		City:	Zip:
		Phone: ()	
		County:	

RECEIPT OF NOTIFICATION

The Department of Toxic Substances Control has received your complaint regarding mismanagement of hazardous waste. This is to inform you of the Informant Reward Program. Please note, this is a voluntary program. Your report may result in the collection of civil or criminal fines or penalties; you may be eligible to receive a reward. To participate in this program an Application For Reward must be filled out and sent back to this office. Whether you participate in the Informant Reward Program or not, the information you reported will be investigated. Thank you for your interest and cooperation in helping to monitor mismanagement of hazardous waste in California.

Thank you for bringing this issue to our attention. If you wish to follow up on your complaint in the future, please refer to the Log Number above when you contact the Department.

Complaint Coordinator
Department of Toxic Substances Control

APPLICATION FOR REWARD**Log Number:** _____

To the applicant: Please complete the information requested below. See page 4 for notification information. Your name and address will not be disclosed in conjunction with your notification or reward application unless it otherwise becomes publicly known in conjunction with a court proceeding or otherwise.

Applicant's Name (Please print):		Social Security No.	
Address (Number and street):	City:	State:	Zip Code:
Person or Office Notified:			Date of Notification:
Brief summary of the information given. (This is for application processing only and is not a substitute for actual notification.)			

CERTIFICATION

I hereby submit application for a reward pursuant to Section 25191.7 of the Health and Safety Code. I understand that all claims must be reviewed for eligibility as set forth in Title 22, Division 4.5, Chapter 22 of the California Code of Regulations.

Signature of Applicant
DTSC 1017 (10/91)

Date Signed

Note: Information to be transferred to complaint log is highlighted in bold italic print. Attach addendum if necessary.

**FACTSHEET ON PAYMENT OF REWARDS
(TO BE SENT WITH APPLICATION FOR REWARD)**

California Health and Safety Code Section 25191.7 requires that a reward be paid when any person provides information that “materially contributes” to the imposition of a fine or penalty assessed against a person for violation of the state’s hazardous waste control laws.

The amount to be paid is up to ten percent of the total fine or penalty collected and deposited, or a maximum of \$5,000 for each case reported.

When do I receive my reward?

Within thirty days after the fine or penalty is collected and deposited into the county or State account.

How do I know I am an “eligible informant?”

The application must be submitted to either the Department of Toxic Substances Control (DTSC) or the local prosecuting office within sixty days after the judgment is entered.

Where do I file my application?

DTSC staff will work with you to make sure your application is filed with the correct office. All civil case applications are handled by DTSC’s Sacramento or Glendale office. All criminal case applications are processed by office that prosecuted the case: the local city attorney, district attorney, or the Office of the Attorney General.

DTSC’s various offices statewide can assist you in determining where to send your application. Call the office nearest you. DTSC’s offices include the following:

Sacramento Office
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826
(916) 255-3545

Glendale Office
Department of Toxic Substances Control
1011 N. Grandview Ave.
Glendale, CA 91201
(818)551-2800

Berkeley Office
Department of Toxic Substances Control
700 Heinz Ave., Suite 200
Berkeley, CA 94710
(510) 540-2122

Cypress Office
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
(714) 484-5300

Clovis Office
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, CA 93611
(559) 297-3901

San Diego Office
Department of Toxic Substances Control
2878 Camino Del Rio South, Suite 402
San Diego, CA 92108
(619) 278-3734

APPENDIX D

INVESTIGATIONS LOG-IN FORM

[illegible]

APPENDIX E

PROPOSITION 65 REPORTING REQUIREMENTS FOR DESIGNATED EMPLOYEES

Health and Safety Code

25180.7. (a) Within the meaning of this section, a **"designated government employee" is any person defined as a "designated employee" by Government Code Section 82019, as amended.**

(b) Any designated government employee who obtains information in the course of his official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his jurisdiction and who knows that such discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within seventy-two hours, disclose such information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that such disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years. The court may also impose upon the person a fine of not less than five thousand dollars (\$5000) or more than twenty-five thousand dollars (\$25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make such information available to the public without delay.

(Added November 4, 1986, by initiative Proposition 65, Sec. 4. Operative January 1, 1987, pursuant to Sec. 8 of Prop. 65. Note: Prop. 65 allows the Legislature to directly amend its provisions by 2/3 vote.)

(Emphasis Added)

Government Code

82019. "**Designated employee**" means any officer, employee, member, or consultant of any agency whose position with the agency:

(a) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

(b) Is elective, other than an elective state office.

(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

(d) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

"Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

(Emphasis Added)

(From the Legislative Counsel's web site at www.leginfo.ca.gov on August 8, 2001)



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
1011 N. Grandview Avenue
Glendale, California 91201

Gray Davis
Governor

APPENDIX F

NOTICE OF COMPLAINT REFERRAL

Log Number _____

INFORMANT	SUBJECT OF INVESTIGATION
Name:	Name:
Address:	Firm:
City:	Address:
Phone:	City:
Confidential	County Code: Phone:

The Department of Toxic Substances Control has received your complaint regarding possible mismanagement of hazardous waste, as well as your informant reward application. The complaint and the informant reward application that you filed were referred to the following agency:

(Agency Name)
(Agency Street Address or P.O. Box)
(Agency City), CA (Zip Code)

If your complaint results in collection of civil or criminal fines or penalties, you may be eligible to receive a reward pursuant to Section 25191.7 of the Health and Safety Code. Please contact the above noted office for future inquiries regarding the status of your complaint. All claims will be reviewed for eligibility in accordance with Title 22, Division 4.5, Chapter 22 of the California Code of Regulations.

Thank you for your commitment to keep hazardous waste safely managed in California. If you have any questions please call:

(Appropriate Complaint Coordinator)
(Phone Number)

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.*



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Gray Davis
Governor

NOTICE OF VIOLATION

APPENDIX G

On _____, the Department of Toxic Substances Control
(DTSC), conducted a complaint investigation at:

Name _____

Address _____

Identification No. _____

Person Interviewed _____

**THE FOLLOWING CONDITIONS OR PRACTICES OBSERVED ON THIS DATE POSE A
POTENTIAL THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC AND/OR THE
ENVIRONMENT. YOU ARE HEREBY DIRECTED TO TAKE IMMEDIATE STEPS TO CORRECT
THE CONDITIONS NOTED WITHIN THE TIMEFRAMES SPECIFIED.**

Issuance of this document does not preclude the Department from taking administrative, civil, or
criminal action as a result of the conditions noted herein.

Company Representative Accepting Notice*

Signature _____

Printed Name _____

Title _____

Date _____

DTSC Representative

Signature _____

Printed Name _____

Title _____

Date _____

Phone _____

*Your signature acknowledges receipt of a copy of this
Notice and does not imply agreement with the findings.

Page ____ of ____

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APPENDIX G

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.*

NOTICE OF VIOLATION

(Name)



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806

Gray Davis
Governor

APPENDIX H

Complaint Log Number: _____

Date Received: _____

Date of Report: _____

COMPLAINT REPORT SUMMARY

Subject: _____

Doing Business As: _____

Address: _____

Allegation: _____

Findings/Disposition: _____

Recommendations: _____

Investigation Closed: _____ Supplemental: _____ Other: _____

Investigation sent to: City Attorney: _____ D.A.: _____ A.G.: _____ Other: _____

SUMMARY: _____

COMPLAINANT: _____

Hazardous Waste Management Specialist's Signature: _____

Hazardous Waste Management Specialist's Printed Name: _____

Supervisor Signature: _____

Printed Name: _____

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*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
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Format for Investigation Reports

APPENDIX I

COMPLAINT INVESTIGATION REPORT

LOG NUMBER: _____

SUBJECT OF INVESTIGATION: _____
(Name of individual or company subject to the investigation)

ADDRESS: _____
(Street address, city, State and zip code of individual or company or location of complaint)

TELEPHONE NUMBER: () _____
(If available)

LOCATION OF ACTIVITY: _____
(Street address, city, State, and zip code of investigation location, if different from above)

MAILING ADDRESS: _____
(If different from above)

I D NUMBER: _____

DATE INVESTIGATION STARTED: _____

DATE OF REPORT: _____

NARRATIVE OF FINDINGS

The narrative should document all areas of investigation and be written chronologically as the investigation proceeds. Each step of the investigation should focus on answering the questions of who, what, where, when, why, and how.

A. STATEMENT OF THE ALLEGATIONS

1. Provide the details of the allegations lodged. State when the allegations were first observed. Also note if this is an ongoing activity and when the activity is likely to occur.
 - a. *Who* Specify who is the subject of the investigation.
 - b. *What* Specify what the allegations are. The allegations should be a potential violation of the hazardous waste law.
 - c. *Where* Specify where the alleged activities are taking place. Clearly identify the location using either a street address or landmarks. If the activities are alleged to be occurring at several locations, note all locations.
 - d. *When* Specify when the complaint was received and when the allegations are or were allegedly occurring.
 - e. *Why* Specify, if known, why the activity is occurring.
 - f. *How* Specify how the activity is done, using what chemicals, what equipment, etc.

APPENDIX I

B. CHRONOLOGICAL NARRATIVE OF THE FINDINGS

1. This section should provide all the details necessary to substantiate or disprove the allegations. You only need to include detail for the relevant information. You do not need to go into depth for those areas of the investigation that did not generate critical information to prove or disprove an allegation. As previously stated, each area of investigation (interviews, file searches, site visits, etc.) should be clearly articulated to answer the questions of who, what, where, when, why, and how. For example, each entry into the narrative of the findings should include:
 - a. *Who* Identify all the person(s) interviewed during the investigation, including when and where the interview(s) occurred. Each interview should be documented separately in the narrative unless the interview occurred on the same day, at the same location. Document all staff from DTSC and other agencies who participated in that phase of the investigation and what role or assistance they provided. The persons interviewed during an investigation may include:
 - i. The subject of the investigation or representatives of the company subject to the investigation. Make sure to include titles, such as production manager, owner or operator, with the correctly spelled names. Document how the company normally handles its wastes and review all documents that support or refute the company's claims.
 - ii. The complainant may also be interviewed to gather more information regarding the complaint. Identify the complainant and document where and when the interview occurred. Note whether the complainant is or was an employee of the subject of the complaint. Document how the complainant knew of the allegations in the complaint. Document why the activity occurred if the complainant knows this. Determine if the complainant possesses any documents, photographs, or maps which support the allegations made and then request copies of said documents. Have the complainant initial copies provided. Document who told the complainant to perform certain activities or who provided certain information to the complainant.
 - iii. Staff from DTSC and/or other agencies may also be included among the interviewees.
 - iv. Witnesses to the alleged violation, if there are any known, should be interviewed. The witnesses should be identified, and their involvement in the allegations or alleged activity should be documented.
 - v. During a site visit, document who gave consent. Include the person's title.
 - vi. Document phone or personal interviews conducted. Identify the person(s) interviewed. If someone was interviewed more than once, note all the dates and times the person was interviewed.
 - b. *What* This refers to all the pieces of evidence collected during the investigation. The evidence includes, but is not limited to, all observations made during a site visit relevant to the allegations lodged and other activities observed regarding potential violations, all the relevant documents reviewed and what was found during the review, all photographs taken, all samples collected, all statements made and who made them.
 - i. Statements made by the subject of the complaint or its representatives, the complainant

APPENDIX I

and other witnesses must be accurately documented. This includes the introductory discussions, discussions during the walk-through, and the close-out discussions.

- ii. Document all the evidence gathered to support the violations that were discovered during the investigation.
- iii. Document any written notification left at the facility for violations that present a substantial threat to human health and safety and the environment.
- iv. Document what sampling was conducted and where the sampling was conducted. Consult sampling protocol to document the type of sampling that was conducted. Include a copy of the sampling plan, if one was prepared.
- c. *Where* Document where all investigative activities, including site visits, interviews, and sampling locations, were conducted.
- d. *When* This refers to the dates when activities alleged in the complaint occurred, when investigative activities were conducted (i.e. interviews occurred, when site visits took place, when samples were collected, when the complainant worked at the location, etc.).
- e. *Why* Document why activities occurred, if known.
- f. *How* Document throughout the narrative portion how the complainant knows what he or she knows, how waste is handled, how it is transported, and how it was sampled.

C. VIOLATIONS

1. Investigations where allegations were not substantiated and no other violations were found.
 - a. In cases where the allegations were not substantiated, explain fully why the allegations in the complaint were not substantiated. This documentation must support the determination that no further action should be taken regarding this complaint.
2. Investigations where allegations were substantiated and/or other violations were found.
 - a. Cite all violations and the corresponding supporting evidence for each violation.
 - b. Identify all witnesses to the violation.

D. ATTACHMENTS

1. All documents contributing to the investigation should be listed here and attached to the report including, but not limited to, a copy of the Complaint Report Form, photographs, sampling analysis results, documents received, and maps.

E. RECOMMENDATIONS

1. Investigations where allegations were not substantiated and no violations were detected. The recommendation should be no further action required.
2. Investigations where all allegations substantiated are less than Class I Violations.

Depending on the specifics of the case, the recommendation can be that the issue be referred to a CUPA or that an administrative enforcement action be taken consistent with the

APPENDIX I

Enforcement Response Policy. Generally, Class II and Minor Violations should be referred to the CUPA for follow-up if the violator is regulated by a CUPA.

3. Investigations where allegations were substantiated and at least one of those allegations is a Class I violation.
The recommendation should be to proceed with enforcement pursuant to DTSC's Enforcement Response Policy.

F. WITNESSES:

1. List all witnesses who can testify to the activities described in the investigation report.

Name and Signature of Hazardous Substances Scientist

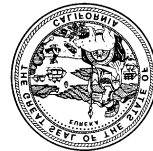
date

Supervisor Signature

date



Department of Toxic Substances Control



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Gray Davis
Governor

(CUPA REFERRAL SAMPLE LETTER)

(CUPA Name)
(CUPA Mailing Address)
(CUPA City), California (ZIP)

Dear (CUPA contact):

On (date), the Department of Toxic Substances Control (DTSC) conducted a complaint investigation at (Company Name, Street Address, City). Please find attached to this letter a copy of the investigation report (report) and supporting documents. This report contains information regarding potential violations of hazardous waste law as noted during the investigation.

DTSC believes the violations identified in the attached report are within the primary jurisdiction of the Certified Unified Program Agency. Therefore, DTSC is referring the identified violations to you for follow-up as you deem appropriate. (Please be advised that this report may contain confidential trade secret information that must be handled in accordance with the requirements of California Health and Safety Code, Section 25173 [Include if trade secret information may be included].) The report may also contain the name and address of the complainant who lodged the initial complaint. Such information is confidential. You must keep this information confidential.

If you have any questions, please contact (Hazardous Substances Scientist's Name) at (Hazardous Substances Scientist's Phone Number).

Sincerely,

(Supervisor)
Attachment

cc. (Appropriate SRPD Contact)

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